

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. The petitioner represents that the copayments (\$3 each) on his covered prescription medications and his additional costs in purchasing prescribed non-covered over-

the-counter medications bring his monthly out-of-pocket medical expenses to over \$400.

3. The petitioner argues that the Department's policies of requiring copayments on prescribed medications and not covering certain over-the-counter medications are violations of the Eighth Amendment, in the sense that if he were incarcerated it would be considered "cruel and unusual punishment" to deny him these medications.

4. The petitioner is aware (see pending Fair Hearing No. M-07/10-316) that his doctors can request an exception under Medicaid if they feel that the petitioner would suffer "unique" and "serious detrimental health consequences" if he cannot obtain any over-the-counter medications not covered by Medicaid. At the hearing the petitioner was also advised of the potential availability of General Assistance (GA) if he could demonstrate that he is facing a "catastrophic" medical emergency if he is without the financial means to obtain any necessary medical treatment or medications.<sup>1</sup> At the hearing, however, other than print-outs he obtained from the internet, the petitioner presented no such evidence from any treating physician or other medical provider.

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<sup>1</sup>The Board's records indicate that the Department has approved such applications by the petitioner for GA in the past. See *infra*.

ORDER

The Department's decision is affirmed.

REASONS

Under W.A.M. § 7501.2 copayments may be required by Medicaid recipients for the purchase of covered prescription medications. The regulations preclude coverage for certain "over-the-counter preparations", including some that have apparently been prescribed for the petitioner. W.A.M. § 7502.5. The petitioner has presented no cogent legal argument that calls into question the statutory or constitutional validity of these policies. Furthermore, the availability of exceptions under Medicaid to prevent "serious detrimental health consequences" (see W.A.M. § 7104), and of General Assistance to cover "emergency medical needs" (see W.A.M. § 2623), undercut the factual premise of the petitioner's argument (i.e., that the above limitations on Medicaid coverage present him with an unmet, or "unmeetable", medical need). To be sure, the Board has recognized (including in a case involving this petitioner, see Fair Hearing Nos. M-09/09-492) that what constitutes sufficient evidence of an "emergency" under the Department's regulations can differ from the perceived needs of the individual

requesting assistance. (See also, Fair Hearing No. M-07-08-318.) At this time, however, inasmuch as the petitioner has not sufficiently demonstrated that his alleged needs and grievances are within the definition or contemplation of Medicaid or any other Department program, the Board is bound to affirm the Department's decision.<sup>2</sup> 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>2</sup>The petitioner's doctors are, of course, free to apply for a § 7104 (formerly M108) exception regarding coverage for any over-the-counter medication they prescribe. The petitioner can also apply for GA if he can produce medical evidence that he is facing an emergency medical need due to his inability to afford any copayment; and he can request an "expedited" fair hearing when and if he receives any adverse decision from the Department regarding any subsequent application for GA.